FILED
DEC 27 1974

In The

Supreme Court of the United States

October Term, 1975

No. 74-813

JOHN G. DE BENEDICTUS,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

ANTHONY J. PUGLIESE
RUSIGNOLA & PUGLIESE
Attorneys for Petitioner
24 Branford Place
Newark, New Jersey 07102
(201) 622-2466

(7266) LUTZ APPELLATE PRINTERS, INC.
Law and Financial Printing

South River, N. J. (201) 257-6850 | New York, N. Y. (212) 565-6377 | Philadelphia, Pa. (215) 563-5587 | Washington, D. C. (202) 783-7288

TABLE OF CONTENTS

	Page
Jurisdiction	2
Questions Presented For Review	3
Statement of Facts	4
Reasons for Granting the Writ	5

TABLE OF CITATIONS

Cases Cited:

Barnes v. United States, 365 F.2d 509, 124 U.S. App. D.C. 318	5
Courtney v. Sarver, 440 F.2d 1197 (C.A. Ark. 1971)	5
Everett v. United States, 281 F.2d 429	6
Holmes v. United States, 284 F.2d 716 (4th Cir. 1960)	6
United States v. Tomailo, 249 F.2d 683 (C.A.N.Y. 1958)	5

Statute Cited:

Title 18 U.S. Code §§371, 641, 642	4

Contents

Page

United States Constitution Cited:

Fifth Amendment 2, 3, 5, 6

Sixth Amendment 2, 3, 6

Fourteenth Amendment 2, 3, 5

APPENDIX

Judgment Dated August 30, 1974 ..... 1a

Judgment on Rehearing Dated November 25, 1974 ..... 4a

Excerpts of Trial Transcript 5a

Memorandum Motion for Mistrial 12a

Excerpts of Trial Transcript (Denial of Motion for a Mistrial) 16a

In The

Supreme Court of the United States

October Term, 1975

No.

JOHN G. DE BENEDICTUS,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

JURISDICTION

The jurisdiction of the United States Supreme Court is invoked due to the fact that petitioner's appeal involves constitutional questions involving his Fifth, Sixth and Fourteenth Amendment constitutional guarantees.

QUESTIONS PRESENTED FOR REVIEW

(a) Did remark by defense witness, Lucia Lynch, regarding petitioner's prior jail incarceration, violate his Fifth and Fourteenth Amendment constitutional rights?

(b) Did the presence of petitioner outside the detention room in custody of the court marshals violate his Fourteenth Amendment right to due process and a fair trial?

(c) Was petitioner's Sixth Amendment right to *effective* assistance of counsel violated?

STATEMENT OF FACTS

Petitioner on March 31, 1971, was indicted and charged with violation of Title 18 U.S. Code, §§ 371, 641 and 642. His trial in the United States District Court for the District of New Jersey resulted in a guilty verdict. He appealed to the United States Court of Appeals for the 3rd Circuit and the verdict was affirmed (1a). A subsequent petition for rehearing was filed and was denied on November 25, 1974 (4a).

On December 11, 1973, petitioner's trial was to begin before Honorable James Coolahan. His attorney, Richard Hogan, who was retained several days prior to trial requested an adjournment, but was only allowed a one day continuance (5a-7a). Petitioner and his attorney only had a couple of hours to discuss his defense and this occurred in the court's detention room. Near the conclusion of his defense, counsel admits to court he didn't have time to adequately prepare for trial (11a).

During the trial, a defense witness, Lucia Lynch, on redirect examination was asked to explain, at Judge Coolahan's request, what she meant by the words "since he got out", and in response thereto she stated, "since he got out of jail the last time (7a-10a). No cautionary instruction was given to the jury. On December 17, 1973, petitioner personally, by a written memorandum (12a-15a) moved for a mistrial regarding Miss Lynch's prejudicial statement made regarding petitioner's prior incarceration. His motion was denied and again no cautionary instruction was given to the jury. On December 19, 1973, petitioner's attorney moved for a mistrial as to her statement, it was denied and again no cautionary instruction was given to the

jury (16a). It was not until his charge to the jury that Judge Coolahan finally gave a cautionary instruction regarding her statement (17a).

During the trial it was also brought to the court's attention that the jury foreman had accidentally viewed petitioner in the custody of the court marshals outside the detention room. Petitioner's motion for a mistrial was denied (18a-23a).

REASONS FOR GRANTING THE WRIT

The United States Court of Appeals for the 3rd Circuit has, in petitioner's case, rendered a decision that is in conflict with decisions of other courts of appeals on the same issues and has decided questions of constitutional law which should be settled by this Honorable Court.

The United States Court of Appeals for the 3rd Circuit ruled that petitioner's Fifth and Fourteenth Amendment rights were not violated by the witness' reference to his prior record and imprisonment. In *United States v. Tomailo*, 249 F.2d 683 (C.A.N.Y. 1958), the court held that reference to a defendant's criminal record was a violation of his Fifth Amendment right to remain silent. Other jurisdictions hold similarly regarding reference at trial to a defendant's prior criminal record. See *Courtney v. Sarver*, 440 F.2d 1197 (C.A. Ark. 1971); *Barnes v. United States*, 365 F.2d 509, 124 U.S. App. D.C. 318.

The Court of Appeals, 3rd Circuit also decided that the presence of petitioner in custody of court marshals outside the detention room didn't violate his Fourteenth Amendment right

as stated in the Due Process Clause. In *Holmes v. United States*, 284 F.2d 716 (4th Cir. 1960), the court held that an improper communication between a deputy marshal and juror that defendant was staying in a county jail during trial serving a sentence, was an improper communication and constituted prejudicial error. This would appear to be in conflict with the United States Court of Appeals for the 3rd Circuit's decision.

Finally, the 3rd Circuit Court decided that petitioner's Sixth Amendment right to effective assistance of counsel wasn't violated. In a Fifth Circuit decision, *Everett v. United States*, 281 F.2d 429, defendant's counsel had one day to prepare his defense and the court held his Fifth Amendment right was in fact violated and constituted reversible error.

Respectfully submitted,

s/ Anthony J. Pugliese

RUSIGNOLA & PUGLIESE
Attorneys for Petitioner

APPENDIX

JUDGMENT DATED AUGUST 30, 1974

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 74-1204

UNITED STATES OF AMERICA

v.

JOHN DE BENEDICTUS
ROBERT GARRITY
NORMAN BUERDSELL

JOHN G. DE BENEDICTUS, Appellant

(D.C. Criminal No. 212-71)

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

Argued August 22, 1974

Before KALODNER, VAN DUSEN and WEIS, Circuit Judges

Judgment

Anthony J. Pugliese, Esq.,
Rusignola & Pugliese, Newark, New Jersey
Attorneys for Appellant

Jonathan L. Goldstein, U.S. Attorney;
William T. Pizzi, Assistant U.S. Attorney;
Newark, New Jersey
Attorneys for Appellee

JUDGMENT ORDER

After considering the contentions raised by appellant that (1) a reference by a defense witness to appellant's prior incarceration was prejudicial and its admission without an immediate curative instruction consituted plain error;[1] (2) appellant's right to a fair trial was prejudiced because the jury foreman saw him outside the court room in the custody of court marshals;[2] (3) the trial court committed prejudicial error in its charge to the jury regarding the issue of the value of the stolen money orders;[3] (4) the trial court violated appellant's Sixth Amendment rights to effective assistance of counsel and to call

1. See *United States v. DeLarosa*, 450 F.2d 1057, 1063 (3d Cir. 1971).

2. See *United States v. Figueroa-Espinoza*, 454 F.2d 590 (9th Cir. 1972); *United States v. Hamilton*, 444 F.2d 81 (5th Cir. 1971); *United States v. Leach*, 429 F.2d 956 (8th Cir. 1970), *cert. denied*, 402 U.S. 986 (1971).

3. See *United States v. Rickey*, 457 F.2d 1027, 1032 (3d Cir. 1972); *United States v. Cioncoli*, 358 F.2d 439 (3d Cir. 1966).

witnesses on his behalf;[4] (5) the trial court erred in allowing the tape and transcript of a telephone conversation into evidence without proper authentication;[5] and (6) the trial court erred in denying appellant's motion for a dismissal of the indictment for lack of a speedy trial;[6]

It is ADJUDGED AND ORDERED that the district court judgment and commitment be and is hereby affirmed.

BY THE COURT:-

s/ Van Dusen
Circuit Judge

Attest:

Thomas F. Quinn
Clerk

Dated:

August 30, 1974

4. There is no factual support for this contention. See 8 9 74 letter to the Clerk with enclosures, referred to in note 6 below, and letters forwarded to the panel with the Clerk's letter of 8 22 74, including letter of Mr. Scola dated 12 5 73 to Mr. Hogan. See also, *e.g.*, N.T. 171, 374-75, 384.

5. See Proposed Federal Rules of Evidence, Rule 901(b)(5) and Example 6.

6. See *Barker v. Wingo*, 407 U.S. 514 (1972); pp. 25-37 of hearing before the district court (Document 54), Criminal No. 212-71 (D.N.J., Dec. 11, 1973); references to the record and documents forwarded with appellee's letter to the Clerk dated 8 9 74, enclosing, *inter alia*, SUPPLEMENTAL BRIEF FOR APPELLEE.

JUDGMENT ON REHEARING DATED NOVEMBER 25, 1974

(Same Title)

SUR PETITION FOR REHEARING

Present: SEITZ, Chief Judge, and KALODNER, VAN DUSEN, ALDISERT, ADAMS, GIBBONS, ROSENN, HUNTER and WEIS, Circuit Judges.

The petition for rehearing filed by appellant in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurrred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

By the Court,

s/ Van Dusen
Judge

Dated: November 25, 1974

EXCERPTS OF TRIAL TRANSCRIPT

[Commencing at p. 38]

MR. HOGAN: Thank you, your honor.

THE COURT: You can make your motion then.

MR. HOGAN: I would like to make one further motion at this time. That would be a motion to postpone the trial until I have had an opportunity to discuss the case with Mr. DeBendedictus.

As I indicated earlier, I had attempted to visit with him on Friday. I made special arrangements to go to New York to meet him at the Federal Detention Center. When I arrived, I was informed that he had been sent to Newark, and he was detained here all day. I had no opportunity to see him at all on Friday.

I submit I don't know what the exact circumstances are, but I was denied the only opportunity I would have had to discuss with him the facts and circumstances surrounding this case. I am not prepared factually to proceed. For that reason, I would request an adjournment.

I made all diligent opportunity I could to meet with him, and I had no opportunity. It was impossible for me to see him on Saturday, business engagements that we had, and it was just impossible.

Excerpts of Trial Transcript

At the hearing last Tuesday, before Judge Augelli, I spoke with him over the phone. I was not here and I indicated to him that we could proceed this Tuesday for trial if I had the full cooperation of Mr. Scola and Mr. Robertson [39] in securing the information and we had an opportunity to present our motions and prepare for the case.

I received Mr. Scola's letter with all documents that he had pertinent to the case on Saturday, which was the same day I received the motion or the brief from the Government. I spent time over the weekend with those. I did not even have a copy of the defendant's pro se motion until that Saturday.

It took that long. He mailed it out Tuesday evening from New York, and I didn't get it. I assume because of the Christmas delay. I submit to the Court that it would be prejudicial to the defendant to proceed at this time.

I don't request much time. I am sure I would say a week, but —

THE COURT: What are we going to do with this Jury?

MR. HOGAN: I realize that is a problem. I did represent to the Court that I would try to be ready today, but circumstances just didn't permit it. Friday could have been spent with other matters and that was taken up in traveling time up and back to New York. I really had no opportunity because of that.

Excerpts of Trial Transcript

THE COURT: Will you be ready tomorrow morning? Spend the rest of the day with your client.

MR. HOGAN: I believe if I had a few more hours to speak with him

* * *

[Commencing at p. 361]

* * *

Did you ever come across anything from the Triple B?

A None whatsoever.

Q Besides John, who else lived in the apartment?

A Well, just John, more or less, and his girlfriends. Linda lived there for a while. Then occasionally, you know, there was girls up there. I couldn't say if the other girls lived up there. I knew Linda had lived with him.

Q No one else lived there?

A No, not that I know of.

MR. ROBERTSON: No further questions.

THE COURT: You may step down.

Excerpts of Trial Transcript

MR. HOGAN: Your Honor—

THE COURT: All right, I understand.

MR. HOGAN: Just a couple.

THE COURT: Go ahead.

REDIRECT EXAMINATION BY MR. HOGAN:

Q Mrs. Lynch, to your knowledge, did Jack ever work for a plastic company in Newark as a foreman?

A Yes. That's right; he worked right down the street. I forgot about that.

Q When was that?

A I think— I know that's when John had gotten out. He had gotten himself a job. I don't know how long he worked there, how long when he got out, how long—

[362] THE COURT: Got out where?

THE WITNESS: When he got out of jail the last time.

THE COURT: When was this? Before this incident?

THE WITNESS: No, way before.

Excerpts of Trial Transcript

THE COURT: Before this incident.

Q Did you decorate John's apartment for him?

A Yes, I did.

Q You like to decorate your own house?

A I do.

Q You did that as a friendly thing for him?

A That's right. John helped me and my husband a lot. I wanted to do as much for him as I could.

Q Was John married when he was staying at your apartment?

A No, he wasn't. He was divorced from his previous wife.

MR. HOGAN: That is all, thank you.

Your Honor, may we have a recess until after lunch?

THE COURT: I beg your pardon?

MR. HOGAN: May we recess until after lunch?

THE COURT: Can you give me an estimate how long you might take with your case in whole? I am not rushing you; I want to get my own affairs set in order.

Excerpts of Trial Transcript

MR. HOGAN: I would anticipate that we would finish up sometime Monday or probably —

* * *

[Commencing at p. 366]:

* * *

that she would not be a cooperative witness for the defense.

I have not heard anything from her since then.

THE COURT: All right. Have you any further witnesses to produce at this time?

MR. HOGAN: Your Honor, at this time, I have no further witnesses.

THE COURT: How about the defendant?

MR. HOGAN: I have advised the defendant that it is not advisable for him to take the stand. However, we are still discussing that subject, and there is a possibility that he would take the stand on Monday.

THE COURT: What about this afternoon? We have a whole afternoon to go.

Excerpts of Trial Transcript

MR. HOGAN: Your Honor, I discussed this with the defendant, and because of the preparation needed to prepare for the Government witnesses, we have not had an opportunity to prepare necessary questions and to discuss what the defendant's testimony would be in any detail.

THE COURT: You mean you haven't done that up to now with him?

MR. HOGAN: No, your Honor. As I have indicated, in the beginning of the trial, the only opportunity I had to discuss this case with him at all before the trial commenced was Tuesday afternoon when the adjournment — Monday afternoon — Tuesday afternoon, when I made a motion for an adjourn-

* * *

MEMORANDUM MOTION FOR MISTRIAL

Comes now the defendant in the instant entitled cause to move the Court at this time for a mistrial, both verbally and in writing, before this Court. The facts surrounding the necessity for this motion are outlined factually as contained herein.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
NEWARK NEW JERSEY

UNITED STATES OF AMERICA

v.

JOHN DEBENEDICTUS

CRIMINAL # 212-71

STATEMENT OF FACTS

ARTICLE V.
(5th Amendment in part)

* * *

"nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law;
(emphasis supplied)

Memorandum Motion

On Friday December 14th, 1973, before the Court in this matter, Judge Coolahan presiding, defendant's Constitutional Rights were abrogated and defendant was made to suffer irreparable prejudice and harm, TO WIT:

During the testimony of the defense witness, Mrs. Lucia Lynch, who was at the time on re-direct examination, the following comment was made by her: (words to the effect of, see transcript)

"Since he got out in 1969, I've known him since he got out".

This answering reply came when defense counsel, Mr. Richard W. Hogan, Esq. asked Mrs. Lynch who was on the stand, "How long have you known the defendant?"

The Court did elicit the prejudicial statement by his direct question of: THE COURT: "OUT", "out of where"? . . . . . ? To which Mrs. Lynch answered from the stand: "Out, since he got out of jail the last time"! (see transcript of exact wording.)

ARGUMENT

In eliciting the prejudicial statement from the defense witness the Court went beyond the boundaries of its duties. The Court, above all others who are amply familiar with Court room procedures, tactics, statements, etc., knew beforehand what the witness meant when she replied: "Since he got out in 1969, I've known him since he got out". Yet, the Court itself pressed onward and elicited the prejudicial statement from the witness.

thereby eliminating all chances for a fair and impartial trial. Defendants Constitutional rights as enunciated in the United States Constitutional, Fifth Amendment were unalterably and irreparably violated and defendant was prejudiced to such an extent by the answer given in response to the prodding of the Court, that to continue this trial in the face of such overwhelming denial and prejudice to the defendant would be to commit an unspeakable, unheard of, abrogation of defendant's right to a fair and impartial trial. Defendant would also mention that should the Judge decide to call the jury forth and expound further on the eliciting of the prejudicial statement already stated in front of the jury it would serve no useful purpose other than to further compound the prejudice and injustice suffered by the defendant already. It is a well known fact that to admonish the jury to "forget" the statement elicited from and made by the witness would do naught except to refreshen and re-emphasize the importance the Court placed upon the statement . . . it would not be forgotten. As it is, the statement is indelibly imprinted upon the jurors minds and there is no reason to further expound it again to the jury and commit more prejudice and irreplaceable harm than the Court has already done.

The defendant's rights have unequivocably and irreparably been abrogated, violated, and done away with. It is no longer in the hands of the defendant to choose to remain silent, and/or to exercise his Constitutional rights. The Court has seen to that by its uncalled for eliciting of the prejudicial statement. By the act of injudiciously prodding and eliciting the statement from the witness the Court has assured that the defendant can no longer receive a fair trial by an impartial Judge, and jury of his peers.

Memorandum Motion

Therefore, the defendant moves this Court to grant his motion for a mistrial to insure that justice is carried out; to correct the manifest prejudicial comment elicited by the Court; to guarantee the striggent regard of the defendant's Constitutional Rights; and to avoid any further travesty of justice.

CONCLUSION

THEREFORE, for all of the reasons stated in the motion, defendant moves this court for the relief requested, to wit: An order of a mistrial.

Respectfully submitted;

s/ John DeBenedictus
John DeBenedictus

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 17 DAY OF DECEMBER 1973

s/ R.J. Harren

EXCERPTS OF TRIAL TRANSCRIPT
(DENIAL OF MOTION FOR A MISTRIAL)

[Commencing at p.439]

* * *

the one called or, (b), in the case of a business, that the call was made to a place of business, and the conversation related to business reasonably transacted over the telephone.

I would submit, your Honor, that this does not fall under subsection (b) of that rule, and that there was no specific identification of the defendant.

THE COURT: The Court will deny that motion. Remember, there was not one call made, but three calls made by Linda Barnett, and as a result of any one of those three telephone calls, he did come to an appointed rendezvous with her, and was there, according to her testimony.

MR. HOGAN: The second motion is reapplication for a motion for a mistrial based on the prejudicial statement made by Lucia Lynch.

THE COURT: We have gone over that. I will deny that motion.

MR. HOGAN: I would like to just make reference to Rule 614, section (c), and advisory comment, subdivision (b) of that rule.

Excerpts of Trial Transcript

The third motion, your Honor, concerns the defendant's rights to Government production of witnesses. This motion has been made before.

THE COURT: And we disposed of that. My ruling will be the same.

MR. HOGAN: Your Honor, I just would like to state

* * *

[Commencing at p.477]

* * *

Jack ever work for a plastic company in Newark as a foreman?

"MRS. LYNCH: Yes, that's right. He worked right down the street. I forgot about that.

"MR. HOGAN: When was that?

"MRS. LYNCH: I think — I know that's when John had gotten out and he had himself a job. I don't know for how long he worked there, how long when he got out, how long —

"THE COURT: Got out of where?

"MRS. LYNCH: When he got out of jail the last time.

Excerpts of Trial Transcript

"THE COURT: When was that? Before this incident?

"MRS. LYNCH: No, way before."

Now, I instruct you, members of the Jury, you are to give no weight to any reference to getting out of jail for purposes of this trial, this criminal trial, and this particular indictment. I instruct you that a prior incident of being in jail is irrelevant as to whether the defendant committed or did not commit the act that the Government charges him in this indictment.

You are therefore to disregard the testimony of Mrs. Lynch in this regard as far as it bears on whether or not the defendant committed the offense for which he is now being charged.

Now, members of the Jury, there are two kinds of evidence from which a Jury may properly find a defendant guilty of an offense. One is direct evidence, such as the)

* * *

[Commencing at p.229]

AFTERNOON SESSION.

MR. HOGAN: Before the Jury is brought in, there is a motion I would like to make based on information I received from the defendant. I would like to move for a mistrial on the basis that there has been a prejudicial effect upon the Jury and upon the Foreman.

THE COURT: In what respect?

MR. HOGAN: In that the Jury has seen the defendant on numerous occasions during the term of this trial in handcuffs and in the presence of the Jury. In particular, after the recess, the morning session, the Foreman was leaving the men's room at the end of the corridor, and the defendant was being brought back to the holding area.

THE COURT: Holding area? Was he handcuffed?

MR. HOGAN: Yes, sir, he was, your Honor.

THE COURT: Where is the Marshal who brought him? Step up, please.

Will you be sworn?

MICHAEL SZLUKA, called as a witness, having been first duly sworn, testified as follows:

THE COURT: Were you in charge of the defendant, to escort him to and from the courtroom to the bullpen at the end of the hall?

THE WITNESS: Yes, sir. Today, Deputy Harris and [230] myself have that responsibility.

THE COURT: Was he handcuffed at any time?

THE WITNESS: No, sir.

THE COURT: All right, examine him.

BY MR. HOGAN:

Q Was there a certain incident involving the Foreman of the Jury as he exited from the men's room that you are aware of?

A In a manner of speaking, yes.

THE COURT: What was that?

THE WITNESS: Sir, as we left the courtroom, I left the anteroom and went down to the Jury room to check that everyone was gone. I walked out into the main lobby out there and saw what appeared to be all the Jurors leaving in the elevator. I waited until the elevator door was closed. I looked further down the hall, past Judge Whipple's chambers. No one was in sight.

Then I went back and motioned to Deputy Harris, okay. As we stepped through the door, this Juror No. 1 stepped through the men's room and we just proceeded on.

Deputy Harris mentioned something to him at that point. I was pretty much out of earshot. I don't know exactly what he said to him.

THE COURT: You were walking with him toward where?

Excerpts of Trial Transcript

[231] THE WITNESS: Towards the door to the bullpen.

THE COURT: Had he been put in the bullpen or just walking along toward the area?

THE WITNESS: Toward the area but not in the bullpen.

THE COURT: Your motion will be denied. Go ahead. You want to examine any further? Go ahead.

MR. HOGAN: I don't believe with this witness. I would like the other Marshal to take the stand.

L.C. HARRIS, called as a witness, having been first duly sworn, testified as follows:

BY MR. HOGAN:

Q Mr. Harris, was the defendant handcuffed today when he was returned to the holding area?

A No, he wasn't.

Q Was there an incident involving the Foreman of the Jury as he was coming out of the men's room?

A As we were going back to the bullpen, Juror No. 1 exited from the men's room. At this time, I turned around and told him to stop and go back into the men's room.

Excerpts of Trial Transcript

THE COURT: Was the defendant handcuffed at the time?

THE WITNESS: No, your Honor.

Q Was he handcuffed? Were you responsible for the [232] custody of the defendant on Tuesday and Wednesday of this week?

A No, I wasn't.

Q Were you present?

A No, I was not.

Q Did the Foreman return to the inside of the men's room after your instructions?

A Yes, he did, as far as I can see.

Q And Mr. DeBendedictus was placed in the bullpen?

A Yes, at the time we went into the bullpen.

MR. HOGAN: Nothing further, your Honor.

THE COURT: Denied.

MR. HOGAN: The defendant was handcuffed on Tuesday and Wednesday of this trial.

Excerpts of Trial Transcript

THE COURT: I will deny your motion. He may have been handcuffed, certainly, on Tuesday and Wednesday, when he was brought over here, but there is no incident that any of the Jurors were there when he was handcuffed.

MR. HOGAN: Yes, he was seen in the presence of the Jurors in handcuffs.

THE COURT: We'll call each Juror in, individually. Do you want that done? I will deny your motion anyway.

Have the Jury come in.

MR. ROBERTSON: Your Honor, I don't think Mr. Hogan is finished.